IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.1110 of 2001.

Judgment reserved on: 14.6.2007

Date of decision: 21st June, 2007.

H.R.T.C. and another ....Petitioners

-Versus-

Joginder Kumar ….Respondent

Coram:

The Hon'ble Mr.Justice Deepak Gupta, ACJ.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Petitioners: Mr.Ashok Sharma, Advocate.

For Respondents: Mr.R.K.Bawa, Senior Advocate with Mr.Inderjit Narwal, Advocate.

Deepak Gupta, A.C.J.

The petitioner HRTC by means of this petition has challenged the order passed by the H.P. Administrative Tribunal on 17-9-2001 whereby the Original Application filed by the respondent has been allowed and the order of compulsory retirement passed against him on March 2, 1998 purportedly under Section 25(F) of the Industrial Disputes Act has been set-aside and he has been directed to be reinstated with all consequential benefits.

Briefly stated the facts of the case are that the respondent was employed as a driver with the HRTC on July 12, 1990. He was issued a number of show cause notices in which it was alleged that

he was guilty of driving the buses under the influence of liquor. Inquiries under CCS(CCA) Rules were initiated against him for imposition of major penalty. The respondent replied to the show cause notices and the inquiries were going on but in the meantime the HRTC passed an office order on 2.3.1998, relevant portion of which reads as follows:

> "Whereas during his period of 7 years Shri Joginder Kumar-I, driver, HRTC, Rural Unit has been issued number of charge sheets for taking liquor while on duty (detail of which is enclosed herewith).
>
> Whereas said Shri Joginder Kumar-I, driver, HRTC, Rural Unit was served with a show cause notice vide this office memorandum No.DM(N)1-E(DVR)/Joginder Kumar-I/97-15381-82, dated 24.12.1997.
>
> Whereas Shri Joginder Kumar-I, driver has furnished his reply to the above mentioned show cause notice on dated 12.01.1998.
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> In view of above, the undersigned has arrived at an honest opinion that Shri Joginder Kumar-I, driver is not amendable and Corporation would not be benefited any longer by the services of Shri Joginder Kumar-I, driver as it has lost confidence in him.
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> Himachal Road Transport Corporation is an Industry and the provision of Industrial Dispute Act, 1947 are applicable to it. In compliance to Rule 25(f) of Industrial Dispute Act, 1947, I order to compulsorily retire Shri Joginder Kumar-I, driver, HRTC, Rural Unit, from services of the Corporation giving him the retirement benefits regarding Pension, Gratuity etc, as admissible under the rules, keeping in view the safety of passengers and best interest of the Corporation."

This order was challenged before the learned Tribunal on the ground that the order has been passed without affording any opportunity to the respondent and also on the ground that no such punitive order could have been passed under Section 25 (F) of the Industrial Disputes Act. The learned Tribunal held, and rightly so in our opinion, that the order which has been purportedly passed under Section 25(F) is totally illegal. Under Section 25(F) the services of a

workman can only be retrenched. No punitive order of compulsory retirement or dismissal from service can be passed under this Section. Even according to the HRTC a number of inquiries had been initiated against the respondent but there were allowed to lapse. It is a well established principle of law that no person can be condemned unheard. The impugned order is totally illegal and has been rightly set-aside by the Tribunal.

However, as far as back-wages are concerned, we are of the considered opinion that keeping in view the latest law as laid down by the Apex Court in a large number of judgments, the respondent who has not worked for almost a decade cannot be given the benefit of full back-wages. We direct that he shall be entitled to all other consequential benefits but as far as back-wages are concerned he shall only be entitled to 50% of the back-wages.

The order of the learned Tribunal is modified to the aforesaid extent only and the writ petition is disposed of. No costs.

(Deepak Gupta),
Acting Chief Justice,

June 21, 2007.
PV

(V.K. Ahuja),
Judge